IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRP.No. 1864 of 2001(D)

RCA.38/1997 of DISTRICT COURT, KASARAGOD
RCP.10/1996 of ADDL.MUNSIFF, KASARAGOD
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REVN. PETITIONERS/APPELLANTS/RESPONDENTS 1 AND 2:

1.THE PRESIDENT, CONGRESS (I) BOOTH OFFICE, KASARAGOD, ASHOK, S/O.MADHAVAN, DOOR NO.V-375, ANANGOOR, KASARAGOD KASABA VILLAGE, KASARAGOD TALUK, P.O.KASARAGOD, KASARAGOD DISTRICT.

2.SHANKARAPPA NAIK, AGED 55, S/O.MAHALINGA NAIK, HINDU, MERCHANT, DOOR NO.V/370, ANANGOOR, KASARAGOD KASABA VILLAGE, KASARAGOD TALUK, P.O.KASARAGOD, KASARAGOD DISTRICT.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN

RESPONDENTS/RESPONDENTS/PETITIONER AND RESPONDENTS 3 TO 9:

1.RADHAKRISHNA BHAT, AGED 60, S/O.PANDURANGA BHAT, HINDU, LANDHOLDER, RESIDING AT MADYA PADAVU SURATHKAL, MANGALORE TALUK, P.O.KATIPALLA, KARNATAKA STATE.

2.LOKESH SHETTY,AGED 26, S/O.MAHABALA SHETTY, MERCHANT, RESIDING AT DOOR NO.V-373 AND V-374, ANANGOOR, KASARAGOD KASABA VILLAGE, KASARAGOD TALUK, P.O.KASARAGOD, KASARAGOD DISTRICT.

3.RAGHAVAN,AGED 61, RESIDING AT DOOR NO.V-372, ANANGOOR, KASARAGOD KASABA VILLAGE, KASARAGOD TALUK, P.O.KASARAGOD, KASARAGOD DIST.

4.LAKSHMI, WIDOW OF K.MAHABALA SHETTY, AGED 57.

5.ANANTHARAMA SHETTY, AGED 30,

6.THARANATHA SHETTY, AGED 28,

7.KALAVATHI, AGED 28,

8.SHALINI, AGED 23,

(RESPONDENTS 5 TO 8 ARE THE CHILDREN OF K.MAHABALA SHETTY, AND RESPONDENTS 4 TO 8 ARE HINDUS, LANDHOLDERS, RESIDING NEAR PARKAR MOHAMMED'S HOUSE, MEEPUGURI, KUDLU VILLAGE, KASARAGOD TALUK, P.O.RAMADAS NAGAR, KASARAGOD DISTRICT.)

BY ADV. SRI.K.G.GOURI SANKAR RAI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007 ALONGWITH CRP.NO.1865 OF 2001, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

C.R.P.NOS.1864 & 1865 OF 2001 (A)

Dated this the 4th day of July, 2007

O R D E R

KOSHY,J.

Revision petitioners herein were the respondents in R.C.P.NO.10/1996. The building scheduled to the application consists of two shop rooms in the ground floor and two other rooms in the first floor and two other rooms with pent roof. The landlord wanted eviction contending that he earlier shifted his residence with family to Karnataka for education for his children. Since the education of children was over, they want to come back and they wanted to reside in part of the building and use other part of the building to conduct grossery business. He filed a single application to evict different tenants occupying different rooms in the same building. Revision petitioners denied the bona fide need and also contended that it cannot be used as a residential place. They also claimed benefit of second proviso to Section 11(3). They also contended that

under Section 11(3), petition cannot be filed jointly against different tenants as there is misjoinder of cause of action. They have taken the objection in the written statement itself. In ***Sultan v. Mohanan (2000 (3) KLT 338)*** it was held by a Division Bench of this Court that a single petition can be filed against many tenants if the eviction is under Section 11(4)(iv) for reconstruction. Full Bench while affirming the above decision in ***Jamal v. Safia Beevi (2005 (2) KLT 359 (F.B.))*** held that if there are different causes of actions or different defences, single petition cannot be filed and Court held as follows at paragraph 10:

> "10. The difficulty arises when the landlord unites several causes of actions against various tenants who are in occupation of distinct portions of same building under separate tenancy arrangements. Question is whether in such case there is misjoinder causes of action. Landlord can file petition for eviction of various tenants who are in occupation of distinct portion of the same building under Section 11 (4)(i), 11(3), 11(4)(iii), 11(8) etc. In such a case causes of action are distinct and separate and defences available to the tenants are also distinct and detached. For example, when landlord filed petition under Section 11 (3) against various tenants occupying separate portions of same structure, different consideration may follow and defences available to the tenant would also be

> different. One of the tenants can defeat the claim of the landlord if he could establish that there is no bona fide need but also on the ground that the tenant is entitled to the benefit of the second proviso to Section 11 (3). Another tenant can also defeat the claim under the first proviso to Section 11 (3) if he could establish that landlord has got another building reasonably sufficient for his requirement. Another tenant occupying a portion of the same structure would not be able to claim the benefit of the second proviso to Section 11 (3) if the tenant is not depending for his livelihood mainly on the income derived from the trade or business conducted in the tenanted premises. Defences available to the tenant could be distinct and different and there would be conflict of interest inter se. So also in a petition under Section 11 (8) as against different tenants who are occupying distinct portions of the same building, tenant can claim the benefit of the first proviso stating that the hardship caused to him would outweigh the advantage to the landlord. Even if cause of action against various tenants is the same, defence available to the tenants against the landlord may be distinct and different. In such a case there is likely to be conflict of interest between the tenants inter se and single petition for eviction against more then one tenants is bad for misjoinder of causes of action and misjoinder of parties."

It shows that a petition under Section 11 (3) cannot be filed jointly against various tenants as defences are separate. Full Bench also held as follows:

> "We are of the view,if causes of actions against

> different tenants are distinct and separate and defence available to the tenants is also vary in such a case if single petition if filed uniting all the causes of action there will be misjoinder of causes of action and misjoinder of parties. Petition of such a nature would be bad for multifariousness."

Here the defences of tenants were different. Without going into the merits, we are of the opinion that the order of eviction is liable to be set aside because of non maintainability of a single petition to evict different tenants who have filed the revision petitions. We set aside the order of eviction passed on the revision petitions on the only ground of non maintainability of petitions filed jointly. We also make it clear that this will not prevent the respondents to file fresh petitions against the revision petitioners, by taking all grounds available to them at the time of filing fresh petition. Both Civil revision petitions are allowed accordingly.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

C.R.P.NOS.1864 OF 2001 (A)
&
1865 of 2001

O R D E R

4th July, 2007